IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.880 OF 1987

State of Maharashtra ...Appellant

Vs.

1. Bhanudas Rama Kurhade
2. Vimal w/o Bhanudas Kurhade
3. Sundrabai w/o Rama Kurhade ...Respondents

Mr.B.R.Patil, A.P.P.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : SEPTEMBER 13, 2004.

ORAL JUDGMENT :(**Per Smt.Ranjana Desai,J.)**

1. The respondents (original accused 1 to 3 respectively) were tried in the Court of Sessions in Session Case No.33 of 1987 for the offence under Section 302 read with 34 of Indian Penal Code. By his Judgment and order dated 22-5-87 the learned Sessions Judge acquitted the accused and hence this Appeal.

2. At the trial, the case of the prosecution was as follows, Accused 2 is the wife of accused 1 and accused 3 is the mother of accused 1. Deceased Hannu @ Hirabai was a married lady. She was married to one Madhukar Kale resident of Ganesh Nagar about 7 years prior to the incident in question. Thereafter, the deceased was staying with her parents at village Chitali. Accused 1 was also resident of village

Chitali. It is the case of the prosecution that accused 1 developed intimacy with the deceased. The father of the deceased P.W.2 Giras Pimpale did not like this but he had no alternative but to tolerate their relationship. According to the prosecution on 14-9-86, accused 1 left village Chitali with the deceased for Kannad, a place near Chalisgaon. On 16-9-86 accused 1 and the deceased returned back to village Chitali. In the meanwhile deceased's mother had started frantic efforts to search her daughter. She had gone to Shrirampur to trace her daughter. At about 9.00 p.m. on 16-9-86 accused 1 brought the deceased near her house by motorbike and he disappeared. Deceased's father and her two sisters viz. Sangeeta and Roshan were present in the house. The deceased was taken in the house by her sisters by giving her support as she was unable to walk properly. Her father made enquiry with her. According to the prosecution she disclosed that accused 2 and 3 after man-handling her forcibly made her consume a medicine due to which she felt giddy. She further disclosed that this medicine was given to her by accused 2 and 3 in the presence of accused 1. By that time the mother of the deceased who had gone in search of the deceased returned to village Chitali. Seeing the condition of her daughter she and her daughter Sangeeta went to the house of Dr.Sonawane. Dr.Sonawane handed over certain tablets to her and asked her to give them to the deceased. At about 4.00 a.m. the condition of the deceased started deteriorating. Dr.Sonawane was again contacted. After

seeing the condition of the deceased, Dr.Sonawane advised her parents to call Dr.Gosavi from his dispensary.

3. Dr.Gosavi was requested to come and see the condition of the deceased. Dr.Gosavi came as requested. He found that the deceased was sinking. He advised her parents to shift her to German Hospital, Shrirampur.The deceased was taken to Chitali Railway station but before the train could start, she died. Her dead body was therefore brought back to the house.

4. The deceased's father went to the village police patil to inform him about the incident. Thereafter, deceased's father and police patil went to Shrirampur taluka police station. P.S.I.Choudhari who was present in the police station reduced the complaint of deceased's father Giras Pimpale into writing. The said complaint is at Exh.21. An offence under section 302 read with section 34 of I.P.C. came to be registered. Investigation was started. The accused came to be arrested. After completion of the investigation the accused came to be charged as aforesaid.

5. In support of its case the prosecution examined as many as 14 witnesses. The case of the prosecution is unfolded by P.W.2 Giras Pimpale, the complainant and the sisters of the deceased P.W.8 Sangeeta and P.W.11 Roshan. The defence of the accused was one of total denial. The evidence adduced by the prosecution did not find favour with the learned Sessions

Judge and he acquitted the accused. Hence this appeal by the State.

6. We have heard Mr.Patil the learned A.P.P. in support of the appeal. We have gone through the evidence and the record. The respondents are served, but nobody is representing them.

7. The learned Counsel for the appellant submitted that the trial court has committed an error in acquitting the accused. He submitted that admittedly the deceased was having illicit relationship with accused 1. The fact that they had left together for Kannad on 14-9-86 is established by the prosecution. P.W.2 Giras Pimpale and the sisters of the deceased have categorically stated that the deceased was brought back by accused 1 and the deceased told them that accused 2 and accused 3 man-handled her and forcibly made her drink some medicine on account of which she felt giddy. According to them the deceased further told them that this was done by accused 2 and 3 in presence of accused 1. The learned A.P.P. contended that there was no reason for the trial court to disbelieve this cogent and consistent evidence of these three witnesses. He submitted that in the circumstances of the case none else could have administered poison to the deceased. Mr.Patil urged that in the circumstances this court should set aside the order of acquittal and convict the accused in accordance with law.

8. The fact that the deceased was deserted by her husband and was having illicit relationship with accused 1, has been established by the prosecution. This has been stated by p.w.2 Giras Pimpale the father of the deceased. P.w.3 Shankar Shivram Shelar has also deposed about this relationship. P.W.8 Sangeeta has also stated that accused 1 used to visit their house. P.W.11 Roshan has also stated that accused 1 used to daily visit their house. According to the prosecution on 14-9-86 accused 1 left with the deceased for Kannad, a place near Chalisgaon. This is stated by P.W.2 Giras Pimpale, p.w.8 Sangeeta and p.w.11 Roshan. Their evidence also suggests that on 16-9-86 the deceased was brought to their house by accused 1 on a motorbike. P.W.2 Giras Pimpale has stated that the deceased and the accused returned to Chitali on 16-9-86. At about 8.00 to 8.30 p.m. on the same day the deceased was brought to his house. His daughters Roshan and Sangeeta were present outside the house. They informed him that the deceased was dropped by accused 1 on motorbike. According to him, his daughters gave support to the deceased and brought her inside the house as she was not in a condition to walk. He asked the deceased as to what had happened. She replied that she was feeling giddy and that accused 2 and 3 had forcibly made her drink some medicine after assaulting her. In the cross examination this witness has stated that from the time the deceased came to his house at about 8.30 p.m. till she was taken to Chitali

Railway station she was not in a position to speak. In the face of this admission, it is difficult to believe that the deceased could have told him and her sisters that the accused administered poison to her. P.W.8 Sangeeta has tried to support P.W.2 Giras Pimpale. She has stated that on 16-9-86 accused 1 and the deceased returned from Kannad. Accused 1 brought the deceased to their house on his motorbike. The deceased was brought inside the house by giving her support. In her cross examination this witness has stated that she was not present when the deceased left for Kannad and she has not seen them returning to Chitali from Kannad on 16-9-86.

9. P.W.11 Roshan has also made an effort to support her father. She has repeated that accused 1 brought the deceased on his motorbike to their house on 16-9-86 at about 9 to 9.30 p.m. and upon enquiry made by her father the deceased replied that she was assaulted by accused 2 and 3 and she was made to drink some medicine by accused 2 in presence of accused 1. In the cross examination she has stated that she had not seen the accused going with the deceased. She had also not seen when the accused and the deceased had returned to Chitali. In the examination in chief she has stated that accused 2 and 3 and sister of accused 1 had come to their house and given threats. In the cross examination she has admitted that for the first time in the court she was deposing about the said threats. In our opinion, it is very risky to place reliance on this witness as she is prone to

exaggeration.

10. P.W.4 Dr.Sonawane was contacted by the mother of the deceased on 16-9-86. According to Dr.Sonawane he had given glucose power to the deceased when the mother of the deceased came home on 16-9-86 at about 12.30 a.m.. At about 5.00 a.m. again she came to his residence. As per the request he visited their residence. He advised them that the deceased should be shifted to the German Hospital, Shrirampur. In the cross examination he has stated that when he visited the complainant's house, he made enquiry with the lady as to what had happened to her. The said lady was unconscious and unable to speak. He made inquiry with her parents who told him that they were unable to give the reason. In our opinion, this statement made by Dr.Sonawane completely demolishes the prosecution case. If really the deceased had informed her father and sisters that accused 1 had administered poison to her, surely they would have informed Dr.Sonawane. Dr.Sonawane has categorically stated that they told him that they could not give him reason why the deceased was unconscious. This reflects on the credibility of the prosecution case.

11. The fact that the deceased died on account of consumption of poison cannot be disputed. Post mortem of the deceased was done by P.W.9 Dr.Kedar on 18-9-86 at 9.40 a.m. He had not given the cause of death as viscera was preserved

for forwarding it to the chemical analyzer. The report of the chemical analyzer dated 20-10-86 clearly establishes that the death of Hannu was due to consumption of poison. In our opinion however, on the basis of the evidence adduced by the prosecution it is difficult to conclude that the accused had administered poison to the deceased.

12. P.W.5 Babu Sadashiv Korde and P.W.6 Keshav Atyaba Nawale were examined to prove panchanama under which Article 1, the bottle containing poison was recovered from the house of accused 1 during its search. These witnesses have turned hostile. It is true that P.W.14 P.S.I. Choudhari who had investigated the case has in his deposition stated that on 18-9-86,search of accused 1's house was taken. Article 1 i.e. the bottle was recovered from the house of accused 1. Even if the said recovery is believed that does not support the prosecution case because that bottle did not contain Melathion.

13. P.W.10 Dr. Wamanrao Ganpatrao Kalyankar appears to have treated accused 1 on 6-9-86. According to him on 6-9-86 accused 1 visited his dispensary. He had handed over accused 1 liquid by name Gamascabal in a sealed bottle for treatment of scabies. The said liquid was only for external use. When Article 1-bottle was shown to him he confirmed that it was the same bottle which was given by him to accused 1. He has further clarified that "Melathion" is not the ingredient of

Gamascabal. The evidence of Dr.Kalyankar completely demolishes the prosecution case. In our opinion, therefore, the trial court was right in acquitting the accused as there is no cogent evidence establishing the involvement of the accused. The view taken by the Trial Court is a reasonable and possible view with which we would not like to interfere in an appeal against acquittal. There is no substance in the appeal. Appeal is dismissed.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)